

SANDLER, REIFF & YOUNG, P.C.

May 13, 2009

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4:09 pm

Thomasina Duncan, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

**Re: MUR 6159
Respondent Baldwin County Education Association**

Dear Ms. Duncan:

This response is on behalf of the Baldwin County Education Association ("BCEA") to a complaint filed by Jeanne Fox and Claire Waites.

The BCEA is a local union that represents teachers employed by the Baldwin County (Alabama) Public Schools. BCEA is affiliated with the National Education Association ("NEA"), a nationwide labor organization, and the Alabama Education Association ("AEA"), the NEA's state affiliate in Alabama.

When the BCEA provided funds to its delegates to enable them to pay for travel costs they incurred to attend the NEA's national convention in Washington, D.C. in July 2008, the local union did not violate the Federal Campaign Act of 1971, as amended, (the "Act") or Commission regulations.

For the reasons stated below, we respectfully request that the Commission find no reason to believe there was a violation and close this matter with respect to the BCEA.

A. Statement of Facts

Members of the BCEA voluntarily serve as delegates to represent their local union at AEA state conventions and NEA national conventions. At the beginning of the 2007-2008 membership/school year, the BCEA approved an annual budget that included funds to pay travel costs for BCEA delegates to attend the AEA convention in Birmingham, Alabama and the NEA convention in Washington, D.C.¹ The budgeted amounts were based on the reasonable estimated cost for traveling from Baldwin County to the convention city and local hotel charges, daily meals, and incidental expenses such as parking at the airport, taxi cab fares in the

¹ See Baldwin County Education Association, Local Budget October 1, 2007 to September 30, 2008 attached as Exhibit 1.

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destination city, and similar expenses. The BCEA 2007 – 2008 budget reflects reasonable differences between the cost of travelling to Birmingham for a two-night state convention and to Washington, D.C. for a seven-night national convention:

Per Person Budget Allocation for Birmingham Two Night Convention

Travel		\$100
Hotel	\$80 per night x 2 nights	160
Meals	\$50 per day x 3 days	150
Incidentals		<u>20</u>
		\$430

Per Person Budget Allocation for Washington, D.C. Seven Night Convention

Travel		\$500
Hotel	\$100 per night x 7 nights	700
Meals	\$80 per night x 7 days	560
Incidentals		<u>200</u>
		\$1,960

Travel to the Birmingham convention involved a 200 mile drive up I-65 from Baldwin County and two nights in a hotel. The trip to Washington, D.C. included a trip to the airport in Mobile, parking for a week at the airport, airfare to Washington, D.C., hotel charges during the summer tourist season, taxi cab fares and similar local travel related expenses in D.C.

Each BCEA delegate is responsible for making his or her own travel arrangements and using the funds allocated by the BCEA to pay directly for airfare, hotel, meals, parking, cab fares and incidental expenses incurred in connection with their attendance at a state or national convention.

In 2003, the BCEA adopted procedures that are followed for each convention: delegates receive eighty-percent (80%) of the per person allocation before the convention and the remaining twenty-percent (20%) at the convention. Delegates are required to account for their expenses and are informed that Internal Revenue Service regulations require that any monies in excess of \$600 not accounted for must be reported as miscellaneous personal income by the delegate.² If, for example, a delegate receives the full travel allocation but decides to stay with a friend or share a room with other delegates then the travel cost savings are treated as personal income to the delegate.

In the summer of 2008, the nine-person delegation from the BCEA traveled to Washington, D.C. to attend the NEA's annual convention. The BCEA delegation included Ms. Fox and Ms. Waites. Pursuant to the BCEA's convention expense procedures, Ms. Waites and Ms. Fox received \$1,568 (80% of the per person travel allocation) before the NEA convention for the purpose of purchasing their airfare in advance and reserving their hotel rooms.

² Howard Declaration ¶ 3, Williams Declaration ¶ 3, and Hunter Declaration ¶ 3

Ms. Saadia Hunter, a BCEA delegate, was responsible for bringing the remaining 20% per person travel allocation balance the BCEA delegates with her to the convention. She had nine envelopes marked with each delegate's name containing \$392 (20% of the per person travel allocation). She distributed these funds to each BCEA delegate during the NEA convention. A full discussion of the distribution of these funds is provided in Ms. Hunter's response in this matter.

Response to Specific Allegation

1. Labor organization funds were not used to make contributions.

The BCEA funds were provided to each delegate for the purpose of paying travel costs incurred in connection with a delegate's attendance at the NEA convention. The prohibition at 2 U.S.C. §441b(a) against using labor organization funds to make contributions in connection with a federal election was not violated even if a delegate voluntarily used a portion of his or her excess travel funds to make a contribution. The travel funds belonged to the delegates who attended the NEA convention. If a delegate chose to use them to make a contribution to NEA's PAC, it was his or her decision to use the funds for that purpose, not the decision of BCEA.

The complainants, Ms. Waites and Ms. Fox, confirm that delegates considered any excess travel funds to be their personal funds. Ms. Waites was adamant that the travel money was her personal funds when she left her voice mail message for Ms. Hunter on July 1, 2008: "Do not spend my money. You have no right spending my money. I don't want my money going to Obama."³ Ms. Fox confirmed that the money in her envelope belonged to her when she: (1) authorized Ms. Hunter to use a portion of the money in Ms. Fox's envelope to make the contribution⁴ and (2) attempted to correct her error by donating \$80 from her envelope for Ms. Hunter to place in Ms. Waites's envelope.⁵

Baldwin County delegates were instructed to account for their travel expenses at the NEA convention and if more than \$600 was not accounted for they were advised to report the excess amount as miscellaneous income on their personal taxes.⁶ A political contribution is not a travel expense. If a delegate were to make the voluntary decision to use a portion of his or her excess travel expense funds to make a contribution then the delegate used the funds for a non-travel expense and must treat that amount as personal income. Even if we assume for the sake of argument that excess travel funds were used by some delegates to make contributions it does not change the fact that the funds are that delegate's personal funds and may be used by him or her for any purpose.

Accordingly, the prohibition at 2 U.S.C. §441b(a) against using labor organization funds to make contributions in connection with a federal election was not violated when the BCEA provided a reasonable amount to each delegate for the purpose of paying their personal convention related travel expenses.

³ Hunter Declaration ¶17

⁴ Williams Declaration ¶6 and Hunter Declaration ¶7

⁵ Hunter Declaration ¶21

⁶ Howard Declaration ¶3, Williams Declaration ¶3, and Hunter Declaration ¶3. Also see 26 U.S.C. §§62(c) and 274(e)(3)

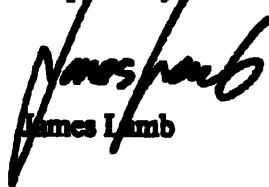
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Conclusion

In the fall of 2007, the BCEA budgeted a reasonable per person allocation for a delegate's travel, hotel, meals, and incidental expenses for the purpose of travelling to the NEA's July 2008 convention in Washington, D.C. Delegates considered any unused or excess travel funds to be their personal funds. A person may use their personal funds for any purpose, including making a contribution. Accordingly, the BCEA did not violate the Act when they provided travel funds to their delegates enabling them to attend the NEA convention.

We respectfully request that the Commission find "no reason to believe" there was a violation and close this matter with respect to the BCEA.

Respectfully submitted,


James Lamb

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